

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JAMES L. FLOWERS, M D.

Respondent

ORDER ON PETITIONS

The Medical Examining Board filed its Final Decision and Order in the above-captioned matter on July 27, 1995. By the terms of the board's Order, Dr. Flowers' license was suspended for 30 days, remedial education was ordered, and Dr. Flowers was required to surrender his DEA registration for Schedule I and II controlled substances for at least two years.

By letter to department Secretary Marlene A. Cummings dated July 31, 1995, Dr. Flowers indicated that one of his patients, LB, had been unable to find another physician to prescribe Schedule II analgesics to control his chronic pain. Dr. Flowers asked the board to exempt him from the requirement of the board's Final Decision and Order by which he is required to surrender his DEA registration as to Schedule I and II controlled substances in order to permit him to continue to prescribe Schedule II substances for that patient. The board considered the request at its meeting of August 23, and denied the request by its order dated September 1, 1995.

By letter dated February 12, 1996, Dr. Flowers again petitioned the board to permit him to prescribe Schedule II controlled substances for patient LB. Thereafter, on February 28, 1996, Dr. Flowers filed a petition relating to that portion of the board's July 27, 1995, Order which requires that "respondent shall not employ, be employed by, or be professionally associated in any way with, Jason Smith, D.O." The petition requested as follows:

- 1) to modify the order only to state as long as Dr. Smith is not licensed to practice,
- 2) that there is no restriction to my medically affiliating with him in any jurisdiction in which he is properly licensed.

The board considered the matter on March 20, 1996, and, by its Order dated April 1, 1996, denied the petition to permit Dr. Flowers to prescribe Schedule II Controlled Substances to Patient LB, but granted the petition to permit association with Dr. Smith in jurisdictions where Dr. Smith is properly licensed, including Wisconsin at such time as Dr. Smith becomes properly licensed in this state.

By petition dated May 5, 1997, Dr. Flowers makes a number of requests of the board. First, Dr. Flowers requested that he be permitted to attend the hearing of his petition. He was in fact permitted to appear before the board on June 25, 1997, to speak on behalf of his petition.

Second, Dr. Flowers requests the board to acknowledge that he has "completed all the requirements imposed by the MEB dated 7/27/97 [sic]." To the best of the board's knowledge, Dr. Flowers is presently in full compliance with the terms and conditions of the board's Final Decision and Order dated July 27, 1995.

Third, Dr. Flowers asks that the board "notify the DEA that I have met all the requirements imposed by the MEB so that I may reapply for the full DEA II through V schedules." The board construes this as a petition to modify the July 27, 1995 Final Decision and Order to permit him to prescribe and dispense Schedule II Controlled substances. While stopping short of stating that he would, if this petition were granted, continue to provide predated prescriptions for Schedule II Controlled Substances, he is apparently unable to understand or acknowledge that such practice is inappropriate. Accordingly, IT IS HEREBY ORDERED that respondent's petition to modify the board's July 27, 1995, Final Decision and Order to permit him to apply for and hold a DEA registration to prescribe, dispense and administer Schedule II Controlled Substances be, and hereby is denied.

Dr. Flowers' third request also asks that it be "clearly stated that there is no evidence that I have abused any legal or illegal substance." The board's July 27, 1995, Final Decision and Order makes no finding of any abuse by respondent of any legal or illegal substance, and there is thus no basis for this request by Dr. Flowers.

Next, Dr. Flowers petitions the board to "remove the requirement [in its July 27, 1995, Final Decision and Order] of taking a CME medical records course if I return to general medical practice." The board's Order contains no such requirement.

Dr. Flower's fifth request is that the board "remove the requirements of an initial history and physical on all patients." The July 25, 1995 Final Decision and Order does not refer to an "initial history and physical," but rather to a requirement that respondent ensure that all patients have a chart containing relevant patient information, including a "complete history" and "appropriate physical examination." To the extent that this request constitutes a petition to permit him to omit the information specified in the Order, he is referred to Sec. Med 21.03(2), Code, which states as follows:

Med 21.03 Minimum standards for patient health care records. (1) A physician, podiatrist or physician assistant shall maintain patient health care records on every patient administered to for a period of not less than 5 years after the date of the last entry, or for such longer period as may be otherwise required by law.

(2) A patient health care record prepared by a physician, podiatrist or physician assistant shall contain the following clinical health care information which applies to the patient's medical condition:

- (a) Pertinent patient history.
- (b) Pertinent objective findings related to examination and test results.
- (c) Assessment or diagnosis.
- (d) Plan of treatment for the patient.

Based upon the cited provision, IT IS HEREBY ORDERED that the petition of Dr. Flowers that he be relieved from the record-keeping requirements set forth in the board's July 27, 1995 Final Decision and Order be, and hereby is, denied.

The next request by Dr. Flowers is that the board "require medical records consistent with my peers who deal, in private practice, with large numbers of Titled patients." Inherent in this request and in Dr. Flowers' comments to the board, is the proposition that "Titled patients" may be treated differently from private pay patients in terms of their medical records. The board rejects any such suggestion or assumption. If Dr. Flowers is aware of other physicians who are routinely disregarding the requirements of ch. Med 21, Code, he is invited to file a complaint with the board.

Finally, Dr. Flowers asks for an explanation of why the description of the disciplinary action brought against him in the Wisconsin Regulatory Digest states that the violation was "prescribing controlled substances other than in the course of legitimate medical practice." The reason is that Dr. Flowers stipulated to the entry of a Final Decision and Order which included as a Conclusion of Law that he had violated, among others, sec. Med 10.02(2)(p). Code. That section states as follows:

(2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

* * * *

(p) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 961.01 (4), Stats., otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law.

Dated this 7th day of July, 1997.

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

by Glenn Hoberg
Glenn Hoberg, D.O., Secretary

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

James L. Flowers, M.D.,

AFFIDAVIT OF MAILING

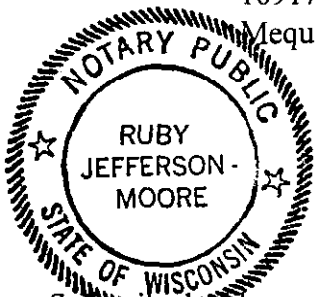
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On July 29, 1997, I served the Order on Petitions dated July 7, 1997 upon the Respondent James L. Flowers, M.D. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 157 393.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

James L. Flowers, M.D.
10917 N. San Marino Drive
Mequon WI 53092



Subscribed and sworn to before me

this 29th day of July, 1997.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

July 29, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)